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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/780,595

02/18/2004

Floyd Backes

160-054

3366

34845

7590

01/20/2006

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EXAMINER

PHILPOTT, JUSTIN M

ART UNIT

PAPER NUMBER

2665

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

8

<b>Office Action Summary</b>	<b>Application No.</b> 10/780,595	<b>Applicant(s)</b> BACKES ET AL.	
	<b>Examiner</b> Justin M. Philpott	<b>Art Unit</b> 2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20051018</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 25, 2005 has been entered.

### *Response to Arguments*

2. Applicant's arguments filed October 25, 2005 have been fully considered but they are not persuasive.

3. First, applicant argues (page 5 through page 6, first paragraph) that “Karaoguz thus clearly states that a communication session *must* be established with a station *before* any location information can be gathered” (emphasis added), based upon paragraph [0029] of Karaoguz. For example, paragraphs [0034-0036] disclose communication between access point and wireless device. However, applicant’s argument is flawed in that it fails to recognize that Karaoguz specifically recites “The access point can determine the location information of the wireless device in various ways” (paragraph [0029]), and that one way location information can be determined is having “transmitted signals ... come into contact with the wireless device, and thereafter the signals can reflect back to the access point” (paragraph [0031]), wherein *reflecting* signals is known in the art *not* to require a “communication session”. Thus, applicant’s

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argument, characterizing Karaoguz as discussed above, is not persuasive. Furthermore, it is also noted that applicant's claims fail to recite a "communication session" or any similar language.

Thus, applicant's argument regarding a "communication session" in Karaoguz is moot since such a limitation is not recited in applicant's claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

4. Second, applicant argues (page 6, second paragraph continued to page 7) that Karaoguz does not teach a station becomes associated with an access point in order to gain network access to communicate with other stations via the access point, as newly recited in applicant's amended claims 1 and 6. However, as discussed in the following action, Karaoguz teaches this limitation, reciting "all communications *between* the devices 120a, 120b, 120c, 120d, ... 120n *or* between the devices and the wired network 105 can go through the node or Access Point 115" (emphasis added) (paragraph [0015]), clearly indicating stations become associated with an access point to communicate with other stations via the access point. Accordingly, applicant's argument is not persuasive.

5. Third, applicant argues (pages 7-8) that it would not have been obvious to switch location of parts in Karaoguz since such a switch would provide differences well known in the art. However, the contention of obvious choice in design can be overcome if Applicant establishes unexpected results. *In re Japikse*, 86 USPQ 70 (CCPA 1950). Since applicant admits it is well known in the art that shifting the location of parts as suggested by Examiner would produce particular advantages or disadvantages for particular applications, Examiner maintains the position that shifting the location of parts as previously suggested is an obvious choice in design.

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Applicant has not provided that such a shift would produce unexpected results such that a shift would be nonobvious, and accordingly, Applicant's argument that it would not have been obvious to one of ordinary skill in the art to shift the location of parts as suggested by Examiner is not persuasive.

*Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent

Application Publication No. US 2004/0054767 A1 by Karaoguz et al.

Regarding claim 1, Karaoguz teaches a program product for use in an access point (e.g., access point 115, see FIG. 1) in a wireless communications environment (e.g., wireless network 110) including multiple access points (e.g., see paragraphs 0019-0021 regarding a plurality of access points) and stations (e.g., wireless devices 120a-120n), wherein stations (e.g., 120a-120n) gain network access by associating with one or more of the access points (e.g., 115), the program product comprising a computer readable medium (e.g., inherently provided in access point 115 for “gather[ing] and stor[ing] statistical information” according to paragraph 0024 and also via location information processor described in paragraph 0033) having embodied therein a computer program for storing data (e.g., see paragraph 0024 regarding storing statistical

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information), the computer program comprising: logic for keeping track of one or more parameters related to stations in the network (e.g., gathering and storing statistical information such as location and identity information of the wireless devices 120-120n, power levels, channel cycling, frequencies, coverage area, traffic patterns, etc., see paragraph 0024); logic for evaluating the one or more parameters to produce an evaluation (e.g., see paragraph 0033 regarding location information processor determining the distance range using the gathered or stored information); and logic for causing a station (e.g., 120a-120n) to become associated with the access point (e.g., 115) based upon the evaluation (e.g., see paragraph 0045 regarding modifying the network to achieve optimized network configuration based upon the location information and statistical information; see also paragraph 0021 regarding a wireless devices receiving coverage from an access point in the geographic area upon the access point powering on, and paragraph 0028 regarding adjusting transmission power levels for optimal network configuration for continued coverage in accordance with the stored information; see also paragraph 0033 regarding location information processor for determining the distance range which is used for causing a station to become associated with an access point), in order to gain network access to communicate with other stations via the access point (e.g., see paragraph 0015 regarding, “all communications between the devices 120a, 120b, 120c, 120d, ... 120n or between the devices and the wired network 105 can go through the node or Access Point 115”).

Regarding claim 2, Karaoguz teaches logic for receiving messages from stations, wherein the messages include at least some of the one or more parameters (e.g., see paragraphs 0029-0038 regarding determining device location, and specifically paragraph 0036 regarding the wireless device sending a range message acknowledgement).

Regarding claim 3, Karaoguz teaches a parameter is the number of stations associated with the access point (e.g., inherently represented by the identity information of each wireless device associated with the access point, see paragraph 0024).

Regarding claim 4, Karaoguz teaches a parameter is the distance of a station (e.g., wireless device 120a-120n) from the access point (e.g., 115) (e.g., see paragraphs 0029-0038, and specifically paragraph 0029 regarding determining a distance range location information of a wireless device).

Regarding claim 5, Karaoguz teaches at least some of the one or more parameters are stored in a table (e.g., see paragraph 0040 regarding the information being stored in a data memory unit within the access point, inherently comprising a table).

Regarding claim 6, as discussed above regarding claims 1-4, Karaoguz teaches a program product for use in an access point (e.g., access point 115, see FIG. 1) in a wireless communications environment (e.g., wireless network 110) including multiple access points (e.g., see paragraphs 0019-0021 regarding a plurality of access points) and stations (e.g., wireless devices 120a-120n), wherein stations (e.g., 120a-120n) gain network access by associating with one or more of the access points (e.g., 115), the program product comprising a computer readable medium (e.g., inherently provided in access point 115 for “gather[ing] and stor[ing] statistical information” according to paragraph 0024 and also via location information processor described in paragraph 0033) having embodied therein a computer program for storing data (e.g., see paragraph 0024 regarding storing statistical information), the computer program comprising: logic for keeping track of one or more parameters related to stations in the network (e.g., gathering and storing statistical information such as location and identity information of the

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wireless devices 120-120n, power levels, channel cycling, frequencies, coverage area, traffic patterns, etc., see paragraph 0024); logic for evaluating the one or more parameters to produce an evaluation (e.g., see paragraph 0033 regarding location information processor determining the distance range using the gathered or stored information); and logic for causing a station (e.g., 120a-120n) to become associated with the access point (e.g., 115) based upon the evaluation (e.g., see paragraph 0045 regarding modifying the network to achieve optimized network configuration based upon the location information and statistical information; see also paragraph 0021 regarding a wireless devices receiving coverage from an access point in the geographic area upon the access point powering on, and paragraph 0028 regarding adjusting transmission power levels for optimal network configuration for continued coverage in accordance with the stored information; see also paragraph 0033 regarding location information processor for determining the distance range which is used for causing a station to become associated with an access point), in order to gain network access to communicate with other stations via the access point (e.g., see paragraph 0015 regarding, “all communications between the devices 120a, 120b, 120c, 120d, ... 120n or between the devices and the wired network 105 can go through the node or Access Point 115”). Further, as discussed above regarding claim 2, Karaoguz teaches logic for receiving messages from stations, wherein the messages include at least some of the one or more parameters (e.g., see paragraphs 0029-0038 regarding determining device location, and specifically paragraph 0036 regarding the wireless device sending a range message acknowledgement). Still further, as discussed above regarding claim 3, Karaoguz teaches a parameter is the number of stations associated with the access point (e.g., inherently represented by the identity information of each wireless device associated with the access point, see



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paragraph 0024). Finally, as discussed above regarding claim 4, Karaoguz teaches a parameter is the distance of a station (e.g., wireless device 120a-120n) from the access point (e.g., 115) (e.g., see paragraphs 0029-0038, and specifically paragraph 0029 regarding determining a distance range location information of a wireless device).

### *Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-6 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Karaoguz.

Regarding claims 1-6, Karaoguz teaches the program product discussed above regarding claims 1-6. Alternatively, if the processing in the access point (e.g., see paragraph 0033) in Karaoguz is interpreted not to be the *cause* of a station to become associated with an access point, but rather, as *assisting* the central server in causing a station to become associated with an access point, it is generally considered to be within the ordinary skill in the art to shift the location of parts absent a showing of unexpected results. In re Japikse, 86 USPQ 70 (CCPA 1950). Thus, at the time of the invention it would have been obvious to one of ordinary skill in the art to shift the location of logic for evaluation and/or logic for causing association from a central server to an access point since it is generally considered to be within the ordinary skill in the art to shift the location of parts absent a showing of unexpected results. The contention of

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obvious choice in design can be overcome if Applicant establishes unexpected results. In re Japikse, 86 USPQ 70 (CCPA 1950).

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

11. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

12. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 1-6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 10/781,458. Although the conflicting claims are not identical, they are not patentably distinct from each other because each recites logic performing identical functions.

14. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Philpott whose telephone number is 571.272.3162. The examiner can normally be reached on M-F, 9:00am-5:00pm.

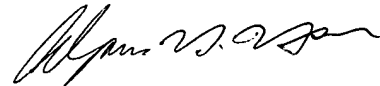
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on 571.272.3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Justin M Philpott



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PRIMARY EXAMINER